

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 305

Disposition of Human Remains

SPONSOR(S): Renuart

TIED BILLS:

IDEN./SIM. BILLS: SB 708

|    | REFERENCE  | ACTION | ANALYST | STAFF DIRECTOR |
|----|--|--------|---------|----------------|
| 1) | Insurance, Business & Financial Affairs Policy Committee |        | Reilly  | Cooper         |
| 2) | Military & Local Affairs Policy Committee                |        |         |                |
| 3) | General Government Policy Council                        |        |         |                |
| 4) |  |        |         |                |
| 5) |  |        |         |                |

SUMMARY ANALYSIS

Pursuant to federal law, military service members must complete the United States Department of Defense "Record of Emergency Data" (Department of Defense Form 93). The form requires, in part, that service members designate a "person authorized to direct disposition" of their remains in the event of death. Only a family member can be selected for this responsibility. Service members update the form annually and prior to any deployment.

Funeral and cemetery regulation in Florida is governed by ch. 497, F.S., the Funeral, Cemetery, and Consumer Services Act. The act defines the "legally authorized person" to determine disposition of the deceased's remains as the deceased person under certain conditions, or the first existing family member from a priority listing of individuals. Specifically, the legally authorized person is defined as the first of the following individuals:

- The deceased person, if he/she has provided inter vivos authorizations and directions.
- The surviving spouse, unless the spouse has been arrested for domestic violence that contributed to the deceased person's death.
- A son or daughter 18 years of age or older.
- A parent.
- A brother or sister 18 years of age or older.
- A grandchild 18 years of age or older.
- A grandparent.
- Any other person in the next degree of kinship.

If no family member exists or is available, another person may be recognized as the legally authorized person.

House Bill 305 amends the definition of legally authorized person to include, for military service members who die while serving on active duty, the person designated on DD Form 93 or any successor form. This designation is given priority over the hierarchical list of family members who may serve as the legally authorized person under Florida law, and is second in priority only when the deceased service member is the legally authorized person. Thus, the family member selected on DD Form 93 will be recognized as the legally authorized person to direct disposition of the service member's remains if he/she dies while serving on active duty, unless the service member is the legally authorized person. The bill also eliminates potential conflicts regarding the ultimate disposition of the remains of service members who die while serving on active duty when the relative designated on DD Form 93 would not be considered the legally authorized person under ch. 497, F.S.

The bill takes effect upon becoming law and appears to have no financial impact on state or local governments.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Disposition of the Remains of Deceased Service Members**

###### "Person Authorized to Direct Disposition" Pursuant to Pub. L. No. 109-163

Military service members, including members of the Armed Forces and Active, National Guard, and Reserve Component personnel,<sup>1</sup> are required to complete the United States Department of Defense Record of Emergency Data (DD Form 93). In accordance with the National Defense Authorization Act for Fiscal Year 2006,<sup>2</sup> service members designate a "person authorized to direct disposition" of their remains in event of death. The designation is made in Item 13a of DD Form 93. A family member must be selected as the person responsible for disposition of the remains.<sup>3</sup> The completed form is witnessed by an authorized military official.

###### "Legally Authorized Person" to Determine Disposition under the Florida Funeral, Cemetery, and Consumer Services Act

Under the Florida Funeral, Cemetery, and Consumer Services Act, ch. 497, F.S., the "legally authorized person" to determine disposition of a deceased's remains is defined as the deceased person if certain conditions have been met, or the first existing family member from a priority listing of individuals. Specifically, the legally authorized person is defined in s. 497.005(37), F.S. as the first of the following enumerated individuals:

- The deceased person, if he/she has provided inter vivos authorizations and directions.
- The surviving spouse, unless the spouse has been arrested for domestic violence that contributed to the deceased person's death.
- A son or daughter 18 years of age or older.

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<sup>1</sup> See Enclosure 7, "General Instructions for Use and Preparation of the Record of Emergency Data (DD Form 93)," to Department of Defense Instruction 1300.18 for a complete listing of personnel required to complete DD Form 93. Found at: <http://www.defense.gov> (last accessed January 8, 2010).

<sup>2</sup> Pub. L. No. 109-163, s. 546.

<sup>3</sup> The instruction to service members for completing Item 13a reads as follows: "Enter the name and relationship of the Person Authorized to Direct Disposition (PADD) of your remains should you become a casualty. Only the following persons may be named as a PADD: surviving spouse, blood relative of legal age, or adoptive relatives of the decedent. If neither of these three can be found, a person standing in loco parentis may be named." See "Detailed Instructions for Completing the Record of Emergency Data Form (DD Form 93)." Found at <http://www.defense.gov> (last accessed January 8, 2010).

- A parent.
- A brother or sister 18 years of age or older.
- A grandchild 18 years of age or older.
- A grandparent.
- Any other person in the next degree of kinship.

If no family member exists or is available, another person may be recognized as the legally authorized person.

The legally authorized person is determined solely from the priority listing of individuals set forth in statute. Thus, the military service member's designation on DD Form 93 has no effect on the determination of the legally authorized person under ch. 497, F.S.

### **Key Quality of Life Issue Identified by the United States Department of Defense**

The United States Department of Defense (DoD) has identified "Comporting State Laws with DoD Rules on Disposition" as a Key Quality of Life Issue Supporting Service Members and Families for 2010.<sup>4</sup> To date, DoD reports that it has obtained sponsorship of bills supporting this objective in 19 states, including Florida. The bills are tailored to address specific statutory language. Generally, they recognize the individual designated on DD Form 93 as the person authorized to direct disposition of the service member's remains under state law, and give this designation priority over all other persons who may serve in this capacity, except for the service member him/herself.

### **Effect of the Bill**

House Bill 305 expands the listing of individuals who may serve as the legally authorized person to include, for military service members who die while serving on active duty, the family member designated on DD Form 93 or any successor form. In such circumstances, this designation will be given priority over the hierarchical list of family members who may serve as the legally authorized person, and will be second in priority only to the situation in which the service member qualifies as the legally authorized person. Thus, for military service members who die while serving on active duty, the family member designated on DD Form 93 will be recognized as the legally authorized person to direct disposition of the remains, unless the service member him/herself qualifies as the legally authorized person.

The bill also eliminates the potential for disputes over the ultimate disposition of the remains of service members who die while serving on active duty when the person designated on DD Form 93 would not be considered the legally authorized person under s. 497.005(37), F.S.

#### **B. SECTION DIRECTORY:**

**Section 1.** Amends the definition of legally authorized person to determine disposition of a deceased's remains under s. 497.005, F.S.

**Section 2.** Provides for the bill to take effect upon becoming law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

<sup>4</sup> See <http://www.USA4MilitaryFamilies.org> (last accessed January 8, 2010).

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**